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8 **IN THE SUPREME COURT**  
9 **STATE OF ARIZONA**

10 SUA SPONTE PETITION TO  
11 AMEND ARIZ. R. CIV. P. RULE  
12 11(a), ARIZ. R. CRIM. P. RULES  
13 31.13, 31.18, and 31.19, and ARIZ.  
14 R. CIV. APP. P. RULES 13, 22,  
15 and 23

Supreme Court No. R-11-0011

**Comment of the State Bar of Arizona  
on Petition to Amend Ariz. R. Civ. P.  
Rule 11(a), Ariz. R. Crim. P. Rules  
31.13, 31.18, and 31.19, and Ariz. R.  
Civ. App. P. Rules 13, 22, and 23**

16 A petition has been submitted *sua sponte* by the Arizona Supreme Court to  
17 amend Rule 11(a) of the Arizona Rules of Civil Procedure, Rules 31.13, 31.18  
18 and 31.19 of the Arizona Rules of Criminal Procedure, and Rules 13, 22 and 23 of  
19 the Arizona Rules of Civil Appellate Procedure. The proposed amendments to  
20 the Rules of Criminal Procedure and the Rules of Civil Appellate Procedure relate  
21 to the implementation of electronic filing in the appellate courts of the State of  
22 Arizona and the streamlining of motions relating to reconsideration and review by  
23 the appellate courts. The proposed amendments to Rule 11(a) of the Arizona  
24 Rules of Civil Procedure relate to the treatment of electronically filed documents  
25 for purposes of the rule's certification requirements.

26 For the reasons set forth below, the State Bar believes that the proposed  
revisions to Rule 11(a) of the Arizona Rules of Civil Procedure regarding the  
treatment of electronically filed documents are better dealt with in Rule 124 of the

1 Rules of the Supreme Court of Arizona, with a cross-reference in Civil Procedure  
2 Rule 11(a) to the provisions of Rule 124 regarding signatures on electronically  
3 filed documents. There is currently pending a petition filed by the Administrative  
4 Office of Courts (“AOC”) to amend Rule 124 to include provisions regarding  
5 signatures on electronically filed documents (Supreme Court No. R-11-0012).

6 The State Bar supports the petition’s proposed revisions to the Rules of  
7 Criminal Procedure and the Rules of Civil Appellate Procedure.

8 **1. Proposed Revisions to Rule 11(a) of the Rules of Civil Procedure.**

9 The petition proposes revisions to Rule 11(a) of the Arizona Rules of Civil  
10 Procedure that would draw a distinction between documents filed with the court  
11 in hard copy and documents filed electronically with the court. Under the  
12 proposed revisions, only documents filed in hard copy would require a signature.

13 Documents filed electronically would not require a signature, but instead  
14 submission of such documents under an attorney’s or party’s login ID and  
15 password would constitute certification to the requirements of Rule 11(a).

16 A petition filed by the AOC seeking various amendments to Rule 124 of the  
17 Arizona Supreme Court Rules is now pending (Supreme Court No. R-11-0012).<sup>1</sup>  
18 Among the amendments sought by that petition is the addition of provisions  
19 regarding signatures for purposes of documents filed electronically through  
20 AZTurboCourt. In relevant part, the proposed revisions are as follows:

21 (1) An attorney is responsible for all documents filed under the  
22 attorney’s registered login ID and password. Documents filed in  
23 AZTurboCourt under an attorney’s registered login ID and  
24 password, and that display the symbol “/s/” with the attorney’s  
25 printed name, shall be deemed signed by that attorney for purposes  
of the rules governing practice and procedure in the courts of this  
state, including Rule 11, Rules of Civil Procedure.

26 <sup>1</sup> The State Bar has filed a separate comment relating to other amendments proposed by  
that petition.

1 (2) Documents filed in AZTurboCourt by a self-represented litigant  
2 shall be filed under the self-represented litigant's registered login  
3 ID and password. Documents that display the symbol "/s/" with the  
4 self-represented litigant's printed name shall be deemed signed by  
5 that self-represented litigant for purposes of the rules governing  
6 practice and procedure in the courts of this state, including Rule 11,  
7 Rules of Civil Procedure.

8 The State Bar believes that the AOC's proposed amendment to Arizona  
9 Supreme Court Rule 124 setting forth the method for signing electronically filed  
10 documents is the better method for resolving the issue of Rule 11's application to  
11 electronically filed documents. This is the approach followed by the United  
12 States District Court for the District of Arizona with respect to electronically filed  
13 documents (*see* D. Ariz. LRCiv 5.5(g)), and it is an approach that has seemed to  
14 work.<sup>2</sup>

15 To further ensure that lawyers and self-represented litigants are aware of  
16 and comply with the requirements for signing electronically filed documents, the  
17 State Bar suggests adding the following sentence at the end of Rule 11(a)  
18 referencing Supreme Court Rule 124: "Rule 124 of the Rules of the Supreme  
19 Court of Arizona sets forth what constitutes a signature for purposes of documents  
20 filed with the court electronically." Under this approach, Rule 11's existing

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21 <sup>2</sup> In addition to Supreme Court Rule 124 being a better vehicle for resolving the issue of  
22 signatures on electronically filed documents, some of the language of the proposed amendment to  
23 Rule 11(a) is confusing. For example, the proposed language of Rule 11(a)(2) begins with the  
24 language, "The signature of an attorney or party on a document filed in hard copy, or in the case  
25 of a document filed electronically submission under the attorney's or party's login ID and  
26 password, constitutes a certificate by the attorney or party that the attorney or party has read the  
pleading, motion or other paper . . . ." This language is confusing as to what constitutes the  
Rule 11 certificate with respect to an electronically filed document. The language regarding  
signatures found in the AOC's proposed amendments to Rule 124 is much clearer and would  
apply in all cases, not just civil matters, making a reference in Rule 11 unnecessary. If the Court  
chooses to adopt the language set forth in the petition, however, the language at the beginning of  
proposed section (a)(2) should be revised to instead read, "The signature of an attorney or party  
on a document filed in hard copy, or the submission of an electronically filed document under the  
attorney's or party's login ID and password, constitutes a certificate by the attorney or party that  
the attorney or party has read the pleading, motion or other paper . . . ."

1 provisions regarding the need for signatures and the certifications made by such  
2 signatures can remain largely unchanged, and both attorneys and self-represented  
3 litigants will have clear direction as to how to sign electronically filed documents.

4 **2. Proposed Revisions to Rules of Criminal Procedure and Rules**  
5 **of Civil Appellate Procedure.**

6 Most of the petition's proposed amendments to the Rules of Criminal  
7 Procedure and Rules of Civil Appellate Procedure are technical modifications to  
8 facilitate the implementation of electronic filing in the Arizona appellate courts  
9 and do not involve any change in the substance of the rules. The petition also  
10 proposes a series of minor amendments to other rules: (a) clarifying that a request  
11 for extension of time to file a motion for reconsideration shall be filed in the  
12 appellate court that issued the decision in question; (b) clarifying that motions for  
13 reconsideration and petitions for review shall comply with the provisions of  
14 certain other appellate rules "not otherwise suspended by any Administrative  
15 Order of the Supreme Court;" (c) requiring that petitions for review of Court of  
16 Appeals decisions be filed in the Supreme Court rather than the Court of Appeals;  
17 (d) requiring the parties to notify the Supreme Court if a ruling on a motion for  
18 reconsideration moots a petition for review; and (e) amending Criminal  
19 Rule 31.19(h) to conform with Civil Appellate Rule 23(h) so that it provides that  
20 if the Supreme Court denies a petition for review, the order will name any justices  
21 who voted to grant review. The State Bar supports these proposed changes,  
22 which do not affect the substance of the rules.

23 **CONCLUSION**

24 The State Bar supports the petition's proposed amendments to the Rules of  
25 Criminal Procedure and to the Rules of Civil Appellate Procedure. With respect  
26 to the petition's proposed amendments to Rule 11(a) of the Arizona Rules of Civil

1 Procedure drawing a distinction between hard-copy filed documents and  
2 electronically filed documents, the State Bar believes that this issue is better  
3 resolved through an amendment to Rule 124 of the Rules of the Supreme Court of  
4 Arizona clarifying how to sign electronically filed documents, with a reference to  
5 Rule 124 in Civil Procedure Rule 11(a). Such an amendment to Rule 124 has  
6 been proposed by a pending petition filed by the Administrative Office of the  
7 Courts (Supreme Court No. R-11-0012).

8 RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of March, 2011.

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11   
12 John A. Furlong  
General Counsel

13  
14 Electronic copy filed with the Clerk  
15 of the Supreme Court of Arizona  
16 this 31<sup>st</sup> day of March, 2011.

17 By: Kathleen A. Lundgren  
18

19 A copy was mailed to:  
20 Ellen M. Crowley  
21 Arizona Supreme Court  
22 Staff Attorney's Office  
23 1501 W. Washington St., Ste. 445  
24 Phoenix, AZ 85008

25 this 31<sup>st</sup> day of March, 2011.

26 By: Kathleen A. Lundgren